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INTRODUCING **GUIDELINES**
ON
THE USE OF VERBATIM REPORTERS
AT
ADMINISTRATIVE HEARINGS

April, 1991





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THE USE OF VERBATIM REPORTERS

INTRODUCTION

Background

The introduction of the *Freedom of Information and Protection of Privacy Act, 1987* (the “provincial *Act*”) and the *Municipal Freedom of Information and Protection of Privacy Act, 1989* (the “municipal *Act*”) have established new obligations applicable to institutions with respect to the protection of an individual’s privacy. Under either *Act*, individuals can submit a request to access personal information about themselves. The *Acts* also regulate retention periods and disposal practices of institutions. There are a number of institutions governed by the *Acts* that make use of the services of verbatim reporters. These reporters may be employees of the institution or they may be independent corporations or individuals that have contractual relationships with the institution. The verbatim reporters are sometimes used by institutions that conduct administrative hearings and by institutions that conduct inquiries.

The records generated as a result of the use of verbatim reporting services might include transcripts, shorthand notes and other handwritten notes, audio tapes, and stenotype paper tapes. The records may contain personal information about a number of individuals.

Subsection 2(1) of both *Acts* defines “personal information” as:

recorded information about an identifiable individual, including,

- (a) *information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,*
- (b) *information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,*

- (c) *any identifying number, symbol or other particular assigned to the individual,*
- (d) *the address, telephone number, fingerprints or blood type of the individual,*
- (e) *the personal opinions or views of the individual except where they relate to another individual,*
- (f) *correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,*
- (g) *the views or opinions of another individual about the individual, and*
- (h) *the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;*

The Commissioner’s Order 52 dealt with the use of verbatim reporters in one specific context. The Commissioner was concerned about “the adequacy of procedures employed by the institution in retaining control of records relating to hearings under the *Workers’ Compensation Act*”. In the circumstances dealt with in Order 52, the Commissioner concluded that the institution did not have control of the records that were the subject of the Order.

Recognizing that the situation dealt with in Order 52 may be applicable to other institutions that use the services of verbatim reporters, the Office of the Information and Privacy Commissioner/Ontario (IPC) has prepared a set of proposed guidelines for institutions to consider when using the services of verbatim reporters at hearings.

Definition of Terms

For the purposes of these guidelines, the following is a set of definitions of terms used in this document:

“institution”

has the same meaning as that term has in the provincial and municipal *Acts*;

According to subsection 2(1) of the provincial *Act* “institution” means,

- (a) *a ministry of the Government of Ontario,*
- (b) *any agency, board, commission, corporation or other body designated as an institution in the regulations;*

According to subsection 2(1) of the municipal *Act* “institution” means,

- (a) *a municipal corporation, including a metropolitan, district or regional municipality or the county of Oxford,*
- (b) *a school board, public utilities commission, transit commission, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint board of management established under the Municipal *Act*,*
- (c) *any agency, board, commission, corporation or other body designated as an institution in the regulations;*

“hearings”

means proceedings conducted by an institution where oral statements, representations or evidence are introduced;

“reporting service”

means a business entity or an independent contractor providing the services of a verbatim reporter to an institution;

“reporter”

means a verbatim reporter employed by a reporting service;

“record”

has the same meaning as that term has under the provincial and municipal *Acts*;

According to subsection 2(1) of both *Acts*, “record” means,

any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) *correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material regardless of physical form or characteristics, and any copy thereof, and*
- (b) *subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;*

“recordings”

means any record generated by the verbatim reporter including personal information other than the transcript;

“transcripts”

means written, printed or typed copy of recordings;

“records relating to hearings”

means any record of personal information however recorded at hearings by a reporting service including transcripts of those recordings;

Scope and Objectives

The main purpose of this document is to set out guidelines for institutions to consider with respect to the custody and/or control and disposal of records relating to hearings, and thus comply with requirements of the *Acts*.

These guidelines are structured under the following sections:

- procedures employed by institutions to appoint reporting services;
- procedures employed by reporting services to record proceedings at hearings;
- procedures employed by institutions to obtain transcripts of hearings;
- retention policies and disposal procedures used by institutions and reporting services; and
- physical security measures over records relating to hearings.

These guidelines are not intended for institutions which employ their own reporters as opposed to using a reporting service.

In these guidelines, the IPC does not in any way intend to favour or recommend any particular reporting service or any particular recording or transcription method.

BACKGROUND DISCUSSION

Appointing Reporting Services

Institutions generally deal with a specific reporting service or with a list of reporters whom they normally use at hearings. The institution may or may not have a written contractual agreement with the reporting service. Many reporting services use independent contractors as their reporters.

Recording of Proceedings

Normally, the institution will inform the reporting service of the dates and locations of the hearings. Reporters will then attend the hearings and record the proceedings. The reporter is solely responsible to record the proceedings and to provide a certified transcript on request. Generally, reporters use one of the following four methods of recording:

- shorthand;
- stenotype;
- stenomask; and
- open microphone.

Shorthand

The reporter makes shorthand notes of the proceedings. The reporter produces the transcript from the shorthand notes or dictates from the shorthand notes onto an audio tape. The audio tape is then transcribed by a typist. The critical drawback with this reporting method is that it is only the reporter who can accurately type or dictate from his/her shorthand notes. Thus, if the particular reporter who made the shorthand notes is no longer available, the record may not be transcribed accurately.

Stenotype

The reporter uses a shorthand or stenotype machine to produce symbols on a paper tape. The reporter produces the transcript from the machine produced tape or dictates from the paper tape onto audio tape, and the audio tape is then transcribed by a typist. Essentially, this method is the same as shorthand and, thus, has the same drawbacks.

Stenomask

The reporter repeats the proceedings into a audio tape recorder and, normally, also maintains a written log. The audio tape is transcribed either by the reporter or a typist.

Open Microphone

The proceedings are recorded using multiple microphones onto audio tapes. The audio tape is transcribed either by the reporter or a typist.

Modern technology has made an impact on the method of verbatim reporting. The stenotype machine can now be used in conjunction with a computer. The computer is used to translate the shorthand symbols into text, and a transcript can then be produced. Therefore, it is possible for a transcript to be produced almost immediately after the proceeding, either on paper or on a computer screen. This automated method is commonly referred to as Computer Assisted Transcription or CAT. The Honourable T.G. Zuber in his report entitled "Report of the Ontario Courts Inquiry", dated 1987, recommended this method of reporting for the courts in Ontario. He states on page 271:

This Inquiry recommends that the courts of Ontario utilize the CAT system and the open microphone system. The determination of which system should be used in which courts should be made on businesslike principles.

Obtaining Transcripts

After the hearing, the reporter will take the recording away and produce the transcripts when requested. Generally institutions request transcripts from the reporting service over the telephone. Normally, the other parties to the hearing request transcripts directly from the reporting service. Under these circumstances, the reporting service will generally also provide a courtesy copy to the institution. The cost of producing a transcript will depend on the volume to be transcribed.

Retention and Disposal

In this report, the term "records relating to hearings" is defined to mean any record of personal information however recorded at hearings by a reporting service, and transcripts of those hearings. Therefore, we will discuss retention and disposal under two sections, "recordings of hearings" and "transcripts".

Section 2 of Ontario Regulation 15/89 made under the provincial *Act* provides that:

An institution may dispose of personal information only by transferring it to the Archives or by destroying it.

Thus, there are only two ways that an institution as defined under the provincial *Act* may dispose of personal information in its custody or under its control: by transferring it to the Archives of Ontario, or by destroying it. This places additional obligations on an institution when it uses reporting services.

Recordings of Hearings

We have been advised that reporting services retain recordings for a minimum period of five years and that this is a standard followed by certified verbatim reporters. We were also advised that not all institu-

tions specify retention periods to the reporting service. If the institution has not made any arrangements regarding the retention and disposal of records, the reporting service may do as it wishes. It is also possible that the retention period of the reporting service may be shorter than that of the institution and if the reporting service erased the recording, the institution would lose control over the recording. Generally, reporting services erase tapes and other recording medium and shred paper documents.

Transcripts

Reporting services do not normally retain copies of transcripts. Transcripts that have been obtained by an institution are retained according to an approved retention schedule. Some institutions microfilm transcripts.

Security Measures

Institutions may not be aware of the office practices and security measures that are used by the reporting service or its reporters.

Physical possession of records relating to hearings could be with either the institution, the reporting service, or with the reporter employed by the reporting service. It is also possible that the institution may hire independent contractors as opposed to a business entity. Recordings (shorthand notes, tapes, etc.) are in the physical possession of the reporting service or its reporters, and not with the institution. The institution obtains custody of transcripts only when certified transcripts are delivered into its possession by the reporting service.

Taking into consideration the present business practices normally used by reporting services, it is unlikely that an institution will have physical possession of recordings when it uses a reporting service. However, this does not preclude an institution from having an agreement with the reporting service to keep physical possession of the recordings.

GUIDELINES

The following guidelines are based on the premise that reporting services and not institutions will have physical possession of the recordings of hearings. The reporting service will produce transcripts when requested. It is important to note that these guidelines do not preclude institutions from having an agreement with reporting services whereby the institution maintains physical possession of the recordings, but are intended to augment such agreements.

In the following guidelines, any references made to the *Act* mean either the provincial *Act* or the municipal *Act* depending on the institution intending to implement the guidelines.

Appointing Reporting Services

1. An institution should have a written agreement with all of its reporting services.
2. The agreement should require that the reporting service comply with the applicable requirements of the *Act*, the regulations made thereunder, and the *Archives Act*.
3. All reporting services used by an institution should be required by agreement to ensure that the access and privacy requirements of the *Act* and its regulations, are effectively communicated to its reporters.
4. The written agreement between an institution and a reporting service should incorporate the other proposals set out in these guidelines, if applicable.
5. The agreement should address the issues regarding the receipt of transcripts: retention, disposal and security of personal information contained in records relating to an institution's hearings that are in a reporting service's possession, in the event of the termination of the agreement between the institution and the reporting service.

6. Should a reporting service cease to operate or go into liquidation or bankruptcy, an institution should, by agreement, have the primary right to inspect, acquire and possess, if it so desires, records relating to its hearings.

Recording of Proceedings at Hearings

1. The institution should approve the type of recording method that will be used at its hearings.
2. The reporting service should be required by agreement to have adequate procedures in place to enable it to identify records of the institution.

Obtaining Transcripts of Hearings

1. The reporting service should be required by agreement to release transcripts only to the institution.
2. All parties to hearings (or authorized representatives) should formally be made aware of the institution's policy for obtaining transcripts of its hearings.
3. All parties to hearings (or authorized representatives) should request transcripts directly from the institution.
4. The institution should establish procedures to verify that the requester is a party to the hearing and that the transcripts are delivered to the same person.
5. It would be preferable for the reporting service not to retain copies of transcripts. However, if the business practices of the reporting service are such that it must retain copies of transcripts, then those transcripts should be retained and disposed of in accordance with these guidelines.

Retention and Disposal

1. The institution should require the reporting service by agreement to adhere to retention periods for records relating to its hearings which are in accordance with the *Acts* and the regulations made thereunder.
2. The institution should approve both the disposal of records relating to its hearings in the possession of the reporting service, and the disposal procedures and methods used by the reporting service. In doing so, the institution should ensure compliance with the *Acts* and the regulations made thereunder.
3. The reporting service should be required by agreement to dispose of: recording medium (audio/video tapes, computer tapes/disks/cassettes etc.); documents (written notes, shorthand notes, paper tapes of shorthand or stenotype machines, copies of transcripts etc.); and records of any kind that record hearings. All disposal practices should be in accordance with the *Acts* and the regulations made thereunder.
4. The reporting service should be prohibited by agreement from reusing recording medium of any kind (audio/video tapes, computer tapes/disks/cassettes etc.) unless the information on it is destroyed in such a manner that it cannot be re-created.
5. The reporting service should be required by agreement to store records relating to hearings securely in order to prevent them from being accessed by unauthorized persons or from being lost from fire, theft, etc.
4. The institution should inspect and approve the physical security, storage methods and storage locations used by the reporting service to store records relating to its hearings. The reporting service should be required by agreement to maintain the physical security, storage methods and storage locations in the manner specified by the institution.
5. The reporting service should be required by agreement to either have copies of recordings or to implement the necessary precautions to ensure that transcripts can be produced if the original recordings are lost or destroyed.

Alternative Procedures

As an alternative, an institution can request transcripts for all of its hearings. After accurate transcripts have been received by the institution, the reporting service should be required by agreement to dispose of all recordings and transcripts in its possession. In this manner, the institution alone has custody and control of records relating to its hearings. Even under this alternative, some of our other recommendations will continue to be applicable.

It is not the intention of this investigation to evaluate and assess the alternatives available for requesting transcripts. Such an assessment should be conducted by the institution taking into consideration economic and other factors.

Security Measures

1. Reporters and relevant staff of the reporting service should be required by agreement to sign an undertaking of confidentiality with respect to the personal information.
2. The reporting service should be required by agreement to ensure that records relating to the institution's hearings are the property of the reporting service and not that of the individual reporters.

Conservation et disposition

Autres méthodes

Measures de sécurité

ments personnels.

En vertu d'une entente, les sténographes et autres employés concernés du service de sténographie signent l'engagement de repecter le caractère confidentiel des renseignements divulgués.

1.

Measures de sécurité

Par ailleurs, une institution peut exiger des transactions de toutes ses audiences. Après lui avoir formulé toutes ses transactions en bonne et due forme, le service de sténographie dispose, conformément à une entente, de toutes les enregistrements et notes, et de toutes les transcription qui se trouvent en sa possession. Ainsi, seule l'institution conserve la partie de la corvette.

Une entente intermédiaire de renégociation de la dette sur les termes de la dette sera mise en place.

4.

DOCUMENTS SUR CERTAINS ÉLÉMENTS PRIS EN SAV

En vertu d'une entente, le service de sténographie conserve des exemplaires des enregistrements ou des notes ou prend les précautions nécessaires pour pouvoir reproduire les documents en cas de perte ou de destruction de

Une entente obligée disposer du support audio ou vidéo, basé etc.), des documents audiovisuels, etc.)., des machines sténographiques, transcriptions de documents contenant des éléments sonores en encees. Toutes les ren-

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application des lois.

4. L'institution inspec^{te}e approuve la securit^e, Les m^éthodes d'entreposage et les lieux d'entre- posage utilis^{és} par le service de stenographie pour conserver les documents relatifs ^à ses audiences. Le service de stenographie est tenu, en vertu d'une entente, de maintenir la securit^e, Les m^éthodes d'entreposage et les lieux d'entre- posage, de la mani^ére sp^{éc}ifiée par l'institu- tion.

L'Institution approuve la publication des lois aux auditements. Ces dernières sont conformes aux lois.

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en application des lois

Le muséum en ligne, une le service de documents relatifs délaï prescrit par le en application des

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2. En vertu d'une entente, le service de sténographie garantit que les documents relatifs aux audiences de l'institution demeurent sa propriété et non celle des sténographes.

merciales y obligen a cumplir las consignas establecidas en las directivas.

DISCUSSION GENERAL

Embauchage de services de stenographe

Le sténographe utilise un appareil de sténotypie imprimante des sténogrammes sur un ruban de papier. Le sténographe transcrit le ruban produit par l'appareil ou dicte ce ruban sur une bande audio qui est ensuite transcrit par un dictylographe. Cette méthode est essentiellement identique à la sténographie et a donc les mêmes désavantages.

Steenoxy pie

Stenomastus

Le sténographe enregistre les délibérations au moyen d'un magnétophone en les répétant dans le micro de l'appareil et, habilement, prend aussi des notes. Il transcrit ensuite l'enregistrement audio ou confie cette tache à un dactylographe.

Microphone ouvert

On enregistre les délibérations sur des rubans audio à l'aide de pluseurs microphones. Un sténographe ou un dictylographe transcrit ensuite l'enregistrement audio.

délipérou

These will now be eliminated as deliberations

Les institutions font souvent affaire avec le même service de sténographie ou encore possèdent une liste de sténographes qui elles emploient régulièrement pour les audiences. L'institution n'a pas nécessairement pour les sténographes contractuelles écrivantes avec le service de sténographie font appel à des sténographes contractuels indépendants.

Embauchage de services de sténographe

Le sténographe utilise un appareil de sténotypie imprimante et un ruban sténographique. L'appareil de sténotypie imprimante est un appareil mécanique qui convertit les mouvements de la main de l'opérateur en caractères imprimés. Il existe plusieurs types d'appareils de sténotypie, mais le plus courant est le sténographe à ruban. Le ruban sténographique est une bande de papier qui passe à travers l'appareil et qui est marquée avec des caractères sténographiques. Lorsque l'opérateur tape sur le clavier de l'appareil, les caractères sont imprimés sur le ruban. Le ruban sténographique est ensuite transcrit sur une bande audio qui est ensuite dictée au dicteur. Le dicteur peut alors écouter le ruban et le transcrire à l'écrit. Le sténographe à ruban est un appareil très précis et rapide, mais il nécessite une formation spéciale pour l'utiliser correctement.

pure

Le sténographe enregistre les délibérations au moyen d'un magnétophone en les répétant dans le micro de l'appareil et, habilement, prend aussi des notes. Il transcrit ensuite l'enregistrement audio ou confie cette tache à un dactylographe.

These will now be eliminated as deliberations

En temps normal, l'institution informe le service de sténographie de la date et du lieu de la tenue des audiences. Le sténographe assiste à l'audience et prend en note ou enregistre les délibérations. Le sténographe est seul responsable de la prise en notes et de l'enregistrement des délibérations et de la remise de la transcription authentique sur demande. En général, les sténographes utilisent une des quatre méthodes d'interprétation des délibérations et de la transcription authentique sur demande.

Stenographie

La technologie moderne influe sur les méthodes de sténographie. Le sténotype peut maintenant se relier à un ordinateur. Ce dernier traduit les sténogrammes en texte, ce qui permet de produire une transcription. Il devient donc possible d'obtenir une transcription presque immédiatement après les délibérations, soit sur papier, soit sur un écran d'ordinateur. Cette méthode automatisée est souvent appelée transcription assistée par ordinateur ou TAO. L'honorable T.G. Zubr, dans son rapport intitulé «Report of the Ontario Courts Inquiry» datant de 1987, préconisait l'utilisation de cette méthode dans les tribunaux de l'Ontario. Il par ordinateur ou TAO. L'honorable T.G. Zubr, dans son rapport intitulé «Report of the Ontario Courts Inquiry» datant de 1987, préconisait l'utilisation de cette méthode dans les tribunaux de l'Ontario. Il

Le sténographe prend note des délibérations en car-actères sténographiques, transcrit ensuite ses notes sténographiques ou les dicte sur une bande sonore, auquel cas un dictylographe doit ensuite les transcrire. Le principe des avantages de cette méthode est que seul le sténographe peut, de façon exacte, déactylographier ou dicter ses notes sténographiques. Par conséquent, si le sténographe qui a pris les notes n'est plus disponible, il peut être difficile de transcrire le document avec précision.

.sion.

Dans ces directives, le CIPVP n'a nullement l'intention de favoriser ni de recommander un service de sténographie particulier ni une méthode particulière de prise de notes ou d'enregistrement ou de transcription.

Ces directives ne visent pas les institutions qui emploient leurs propres sténographes, mais plutôt celles qui utilisent un service de sténographie.

mesures de sécurité entourant les documents relatifs aux audiences.

methodes employées par les institutions et les méthodes employées par les institutions pour obtenir les transcriptions des audiences;

methodes employées par les institutions pour transcrire les délibérations des audiences;

methodes employées par les services de sténographie pour les institutions pour empêcher des services de sténographie;

Ces directives se divisent en cinq catégories :

Le présent document a pour principale fonction de fournir aux institutions des directives concernant la garde ou le contrôle ainsi que la disposition de documents relatifs aux audiences, de façon à se conformer aux exigences des lois.

Envergure et objectifs

«documents relatifs aux audiences» : tout document contenant des renseignements personnels pris en note ou enregistrés lors d'audiences par un service de sténographie, y compris les transcriptions de notes pris en note ou enregistrées lors d'audiences par un service de sténographie, y compris les transcriptions de ces enregistrements ou notes.

«transcriptions» : copies écrties, imprimées ou dactylographiées des enregistrements.

«enregistrements» ou notes: tout document produit par le sténographe comportant des renseignements personnels autres que des transcriptions.

EMPLOI DE STÉNOGRAPHES

INTRODUCTION

Renseignements généraux

du nom du particulier, s'il figure parmi d'autres renseignements personnels qui le concernent, ou si sa divulgation risque de révéler d'autres renseignements personnels au sujet du particulier.

des enquêtes. Les documents produits par ces services de sténographie peuvent inclure des transcriptions, des notes sténographiques et d'autres notes écrites à la main, des enregistrements sonores et des rubans de sténotypie. Ces documents peuvent contenir des renseignements personnels sur un certain nombre de particuliers. L'article 2 (1) des deux lois définit l'expression «renseignements consignés par des personnes physiques et d'autres personnes» comme suit : «renseignements personnels des personnes physiques et d'autres personnes ayant trait à un particulier qui peut être identifié. S'entend notamment : des renseignements concernant la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial ou familial de celui-ci, des renseignements concernant l'éducation, les antécédents médicaux, psychologiques, criminelles ou professionnelles relatives à sa participation à une opération financière, des renseignements concernant l'éducation, les antécédents médicaux, psychologiques, criminelles ou professionnelles relatives de ce particulier ou des renseignements psychologiques, criminelles ou psychotiques, les antécédents médicaux, psychologiques, criminelles ou professionnelles relatives à sa participation à une opération financière. b)

1) Information et la protection de la vie privée (la « loi provisoire ») et de la Loi de 1989 sur l'accès à l'information mutuelle et la protection de la vie privée (la « loi municipale ») imposent de nouvelles obligations aux institutions en ce qui a trait à la protection de la vie privée. En vertu de ces deux lois, toute personne peut demander à avoir accès à des renseignements personnels qui la concernent. Les lois régissent aussi le détail pendant quelles institutions doivent conserver leurs documents et la façon dont elles doivent en disposer. Un certain nombre d'institutions assujetties à ces lois recourent aux services de sténographes qui peuvent être soit des employés de l'institution, soit des sociétés ou des particuliers employés sous contrat par l'institution. Ces sténographes travaillent parfois pour des institutions qui procèdent à des audiences administratives ou

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Avril 1991

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DIRECTIVES

